IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2402 OF 2004

1. Canara Bank Staff Union
   a trade Union registered under the
   Trade Unions Act, 1926, having their
   office at 268/70, Frere Road,
   Mumbai 400 001.
2. Shri Chandrakant Jangam
3. Shri Umesh Kotian
4. Shri Vijay Vishnu Jamburge
5. Shri Vikas Vasant Jamburge
6. Shri Rajaram Jamburge
7. Shri Vitthal More
8. Shri Vishwanath Mane

All of Mumbai, Indian Inhabitants
C/o. Canara Bank Staff Union
A Trade Union having their office
at 268/70, Frere Road, Mumbai 400 001. ..Petitioners

Vs.

1. Canara Bank
A Banking Company incorporated under
the Banking Regulations Act, through their
Disciplinary Action Cell, 13th floor,
Maker Tower "E" Cuffe Parade, Mumbai 400 005.

2. Shri M.P.M. Sivakumar,
Regional Labour Commissioner (Central)
having his office at Shram Raksha Bhavan
Sion, Mumbai 400 022. ..Respondents

Mr.C.U.Singh with Ms. Shobhana Gopal for Petitioners
Mr.P.K.Rele with Mr. V. Tayade, R.P. Rele and
Mr. Piyush Shah for Respondents

CORAM: F.I. REBELLO, J.
DATE: 9TH DECEMBER, 2004.

JUDGMENT (PER SHRI F.I. REBELLO, J.)

1. Rule. Heard forthwith. An application for relief under Section 33(c)(1) of the Industrial Disputes Act, 1947 for computation of the amounts due in terms of the Award of the Industrial Tribunal

has generated litigation which the Petitioners nos.2 to 8 can illafford, considering the amounts which they are entitled to. Respondent no.1 a Nationalised Bank, State within the meaning of Article 12 of the Constitution of India is bent on contending that even if the applicants are entitled for any amount the procedure followed by them in moving under Section 33(C) (1) of the Industrial Disputes Act, 1947 was not an appropriate remedy and an application under Section 33(C)(2) would be the appropriate remedy, even inspite of the earlier order by this Court dated 15th March, 2004 in Writ Petition No.2960 of 2003.

. Having said so a few facts may now be set out as under :

2. Workmen of respondent no.1 represented by the petitioner no.1 had raised an industrial dispute, that dispute was referred by the appropriate Government. The terms of the reference were as under :-

> . Whether the action of the management of Canara Bank, Mumbai in not regularising the services of Umesh Kotian and six others, all part time employees in 3/4 scale with effect from the dates indicated in the

annexure, is legal and justified ? If not, to what relief the said workmen are entitled to ?

. The learned tribunal after considering the material before it was pleased to pass an Award in terms of the following order :

(i) The action of the Management of Canara Bank, Mumbai in not regularising the services of Umesh Kotian and six others, all part time employees on 3/4th scale with effect from the dates indicated in the annexure is not legal and not justified.

(ii) The Management is directed to treat them all as part time employees on 3/4th scale from the date of their initial appointment as shown in the reference.

(iii) The Management is directed to make the due payments to them on the above said basis deducting the payments already made.

3. The Management subsequent to the Award by their letter dated 6th September, 1999 addressed independently to each of the workman entitled to the amounts under the award, enclosed a demand draft

being the differential wages from the date of initial engagement till the date of regularisation, after deducting the wages already paid as full and final settlement of all claims whatsoever arising out of the Award. The Petitioner workmen by a letter addressed to the Deputy General Manager dated 9th October, 1999 intimated that they are regularised from the date of initial appointment commencing from 21st August, 1985 on 3/4th pay scale and accordingly set out what would be the basic pay they were entitled to draw in terms of the award. It may be mentioned that 3/4th pay scale is only available if workman is a regular employee. As the Management did not make payments as claimed each of the workmen entitled, made an application under Section 33(C)(1) read with Rule 62 (1) of the Industrial Disputes Rules to the Regional Labour Commissioner. The amounts which the workmen would be entitled to were set out. The amount in case of petitioner Umesh Kotian worked out to Rs.26324.80ps. All applications were dated 3rd August, 2000. Respondent no.1 filed their reply and contended firstly that the application was barred by limitation as it was not made within the time prescribed under Section 33(C)(1) of the Industrial Disputes Act. It was then set out that the respondent no.1 had fully complied and implemented the Award dated 20th November, 1998. In reply to

the calculations made by the Petitioners, it was only set out that the calculations made are not true to the facts and are highly imaginative, inflated and not based on any record. It is also set out that the application under Section 33(C)(1) would not be maintainable. Various other replies came to be filed from time to time. By an order dated 19th March, 2001 a certificate came to be issued, which was challenged before this Court. That Petition was allowed and the matter was remanded back for reconsideration by Respondent no.2. Reply was filed on 2nd February 2002, and on 21st October, 2002 a further reply was filed on behalf of the Respondent no.1 where once again the objections earlier raised, were reiterated. The Petitioners filed their rejoinder to the same on 31st October, 2002 and in so far as delay was concerned, it was set out that this Court had disposed of the writ petition wherein, the Award was challenged, by an order dated 27th July, 1999. The certified copy of the order was made available on 21st August, 1999 and the applications were filed on 3rd August, 2000 and therefore, within time. It is also set out, that if there is any delay, the same be condoned. The basis on which the workmen were entitled for the amounts as claimed by them, was explained. An order came to be passed on 4th September, 2003. By that order, the Authority held that there is dispute between the

parties regarding eligibility to claim certain claims and benefits and this could not be done under Section 33(C)(1) of I.D. Act. The application was also dismissed on the ground that there was no reason furnished for delay in preferring the applications. It was noted that Award was published on 20th October, 1998 which came in to force on 20th November, 1998. It is also set out that " The contents of the award clearly establishes the fact that nowhere the due amount is determined. Though the Union has calculated the amount, the same is disputed by the management as such answer to the said question is, amount is disputed by the management and hence required to be determined and the amount to be calculated as an equivalent value of certain benefits granted by the tribunal and incidentally there is a dispute regarding the computation of such benefits in terms of money."

3. The Petitioners challenged the said order before this Court by Writ Petition No.2960 of 2003. A learned Judge while setting aside the said order, in para 4 was pleased to observe that the reason given by the authority to reject the application is that the Award no where determines the amount due to the petitioners and also because the calculations submitted by the petitioners was disputed by the

Management. The learned Judge recorded a finding and found that there is substance in the grievance made on behalf of the petitioners that the respondent no.2 has clearly failed to apply the settled legal position. The learned Judge held that under Section 33(C)(1) of the Act, it is open to the Authority to determine the amount due and payable to the workmen, especially on the basis of admitted facts which are relevant for deciding the claim under Section 33(C)(1) of the Act. The learned Judge also held that going by the Award which is pressed into service, it is seen that certain facts are held to be established and finding recorded in the Award in that behalf will bind both the parties. The respondent no.2 could surely have decided the matter on the basis of those established facts, so as to determine the amount payable to the workmen, specially of the admitted facts which are relevant under Section 33(C)(1) of the Act. The learned Judge also held that respondent Bank had disputed the calculations submitted on behalf of the petitioners. According to the petitioners, the respondent no.1 was only disputing the quantum of the amount claimed on the basis of several reasons, including the fact that the workmen have not worked for the number of days as claimed by them. The learned Judge observed that there is no material on record to support the arguments that such grievance

was made before the respondent no.2. Assuming that such a contention was raised on behalf of the management, the respondent no.2 would be obliged to consider even that aspect of the matter in accordance with law. The authority was directed to decide the subject application afresh on its own merits in accordance with law as expeditiously as possible, in any case within three months from the date of the order. The matter was remanded back for de novo hearing.

4. The respondent bank filed an application on 27th March, 2004 and once again raised the same contentions and also set out that the eligibility of the applicants for the amounts claimed is disputed and as such, the amount due, if any cannot be determined by mere arithmetical calculations and that the applicants are entitled for wages for the actual number of days worked by them and not otherwise. In the reply dated 21st April, 2004 it is pointed out that there was no dispute regarding the date of joining and considering that and the order of regularisation, the calculations had been done considering the applicable DA, CCA, HRA and conveyance allowance. The respondent Bank filed one more reply, where it was set out that the Award of the Tribunal has merely directed Bank to treat them as PTEs on 3/4 scale from the dates of initial

engagement and make due payments to them on 3/4 scale basis after deducting the payments already made, implying thereby that the concerned seven workmen are to be paid on 3/4 scale basis for the actual number of days worked by them till the date of their regularisation and no other benefits. The earlier objections were once again reiterated. Another lengthy reply was filed where once again the objections set out were reiterated. It was also brought on record that as the main dispute is the benefit of regularisation the same has to be determined based on actual attendance (Form D register under Payment of Bonus Act). The said fact has already been brought to the notice of this Court, vide management's affidavit. It may be mentioned that the learned Judge had recorded that no material had been placed before the Court, but the issue was kept alive to enable the management to produce the material.

5. The authority thereafter by the impugned order rejected the applications. The learned authority held that there was a delay which is not explained and there was no need for the applicant to wait for the certified copy of the High Court Judgment in Writ Petition No.1851 of 1994. The learned Authority then held that the petitioners are entitled only for the difference in salary payable

to them in 3/4th scale for actual working hours and they are not entitled for any other benefits. The question whether the amounts claimed are mere arithmetical calculations was noted and the arguments advanced on behalf of the Bank, more so that there was a dispute regarding the existence of the right. The learned Authority considering the award held that the Bank was only directed to pay 3/4th scale and pay differential wages which clearly implies that the respective persons are entitled only for the wages on 3/4 scale for the actual number of days worked after deducting the due wages already paid to them till their regularisation. The next question after rejecting the contention of the petitioners that they were not entitled to other benefits was whether authority had jurisdiction to adjudicate disputed questions like eligibility of the workmen. The Authority observed that there is a dispute with regard to the right and as per the settled law the same cannot be adjudicated. The Authority also held that the Authority under Section 33(C)(1) of the Industrial Dispute Act is not empowered to interpret the Award. It then held that the material dispute is the benefit of regularisation and the same has to be based on actual attendance and consequently rejected the said application. It is this order which is the subject matter of the present application.

6. On behalf of the petitioners their learned Counsel submits that the order of this Court dated 15th March, 2004 in Writ Petition No.2960 of 2003 has clearly held that the application under Section 33(C)(1) was maintainable considering the findings recorded in para 5 of the Judgment and the further direction to consider the amounts payable. The learned Tribunal has failed to consider the true import of the judgment and consequently has failed to exercise jurisdiction which otherwise the Tribunal was bound to exercise. It is next submitted that there was an Award and the amounts due under the Award could be claimed only in application under Section 33(C)(1) of the Industrial Dispute Act. The learned Authority has failed to exercise the jurisdiction by holding that he could not do so the ground that there is a dispute and that too after arriving at a conclusion that the petitioners are not entitled to any amounts except wages in 3/4th scale. The Industrial Tribunal it is contended ought to have held that the action of the management in not granting the benefits to the workmen was not legal and justified and ought to have directed to treat them as regular part time employees on 3/4th scale from the date of appointment and pay all benefits which other regular workers are enjoying. In so far as delay is

concerned it is pointed out that considering the various proceedings including the petition filed it was a fit case where the Authority had to exercise discretion and condone the delay. A failure by the Authority to condone the delay would amount to failure to exercise jurisdiction and the rejection of the application for condonation of delay, would clearly disclose an error apparent on the face of record. In support of the contention that the applications are maintainable learned Counsel places reliance in the judgments of **Sawatram Ramprasad Mills Company, Ltd. Akola Vs. Baliram Ukandaji and another, 1966, 1 Labour Law Journal, 41, in the judgment of the Apex Court in the case of Sitaram Ramchandra and others Vs. Nagrashna (M.N.) (Authority under the Payment of Wages Act for Ahmedabad Area) and others, 1960, 1 Labour Law Journal, 29 and in the case of M/s. Fabril Gasosa Vs. Labour Commissioner, A.I.R. 1997, Supreme Court, 954.**

. On the other hand on behalf of the Respondent Bank their learned Counsel contends that the learned Authority was right in holding that the application was not maintainable under Section 33(c)(1) of the Industrial Dispute Act and also in holding that no case had been made out for condoning the delay in moving the application. It is pointed

out that there are several disputes including whether the amount is due and payable which cannot be gone into in an application under Section 33(C)(1) and in these circumstances the order of the Authority does not suffer from any error apparent on the face of the record. Adverting to the judgments relied upon by the Petitioner's Counsel, it is submitted that Section 33(C)(2) has been amended to include money due and therefore the view taken by the Apex Court in Kays Construction Company (Pvt.) Ltd. (supra) and others, really would not be attracted. Before the judgment could be dictated, reliance has also been placed on the judgment of, Sitaram Ramcharan and others and Nagrashna (M.N.), 1960 1 Labour Law Journa, 29 for the purpose of pointing out that it was the duty of the petitioners to explain the delay.

7. Having heard learned Counsel the first question to be decided is whether the application under Section 33(C)(1) was maintainable. A bare perusal of *Section 33(C)(1) would indicate that where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B the workman himself or any other person authorised by him in writing in this behalf, or in the case of the death of the workman, his assignee or heirs may, without*

prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrears of land revenue, provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer and provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application with the said period.

. On the other hand Section 33(C)(2) is applicable if the workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

. Section 33(C)(1) and Section 33(C)(2)

therefore, operate in two different situations. In the first case where money is due under a settlement or Award. Whereas Section 33(C)(2), applies where the workman claims any money or any benefit which can be computed in terms of money. Even if the argument of learned Counsel on behalf of the respondent Management is accepted that the judgments including in Kays Construction Company Vs. State of Uttar Pradesh where before the amendment to Section 33(C)(2) of the Act nevertheless the position of law, even after the amendment remains the same and has been reiterated in the Judgment of the Apex Court in **M/s. Fabril Gasosa Vs. Labour Commissioner, AIR 1997 S.C. 954.** The contention before the Apex Court in that case was based on the fact that the period of settlement had expired. It was submitted by the respondent Union there, that verification of the claim for money which stood determined under the 1986 settlement squarely fell within the scope of Section 33(C)(1) of the Act. The contention of the appellant employer that the settlement had come to an end. The claim for money could not be considered under Section 33(C)(1). The Apex Court considering the contentions in para 17 observed that the distinction between sub sections 33(C)(1) and sub section 33(C)(2), lies mainly in the procedural aspect , and not with any substantive rights of workmen as conferred by these two sub

sections. There after in analysing the scheme the Apex Court observed as under :

> . "An analysis of the scheme of Section 33C(1) and 33C(2) shows that the difference between the two sub-sections is quite obvious. While the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or V-B, sub-section (2) deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. Thus, where the amount due to the workmem, flowing from the obligations under a setlement, is pre-determined and ascertained or can be arrived at by any arithmetical calculation or simpliciter verification and the only inquiry that is required to be made is whether it is due to the workman or not, recourse to the summary proceedings under-section 33C(1) of the Act is not only appropriate but also desirable to prevent harassment to the workmen. Sub-section (1) of Section 33C entitles the workmen to apply to the appropriate Government for issuance of a certificate of recovery for any money due to them under an award or a settlement or under the provisions of Chapter VA and the Government, if satisfied, that a specific sum is due to the workmen, is obliged to issue a certificate for the recovery of the amount due. After the requisite certificate is issued by the Government to the Collector,, the Collector is under a statutory duty to recover the amounts due under the certificate issued to him. The procedure is aimed at providing a speedy, cheap and summary manner of recovery of the amount due, which the employer has wrongfully withheld. It, therefore, follows that where money due is on the basis of some amount predetermined like the VDA, the rate of which stands determined in terms of the settlement an award or under

> Chapter V-A or V-B, and the period for which the arrears are claimed is also known, the case would be covered by sub-section (1) as only a calculation of the amount is required to be made".

. If the ratio laid down by the Apex Court is considered it would be clear that once there is an award it will be open to the Authority if the amount is predetermined or ascertained or can be arrived at by an arithmetical calculation or simpliciter by verification, then in such case the only enquiry to be made is, whether it is due to the workmen or not? The order of this Court on remand clearly enjoyed on the Authority to determine the amount considering the facts as accepted in the Award of the Industrial Tribunal. The learned Authority on the one hand proceeded to hold that the application under Section 33(C)(1) is not maintainable as there are disputes which can only be answered in an application under Section 33(C)(2) whereas on the other hand held considering the award held that the applicants are not entitled to any other benefits except wages. From the record it is clear that the Authority has recorded a finding that apart from the payment of the wages the workmen would not be entitled to any other dues in terms of Award. To my mind the order is liable to be set aside for failure to exercise jurisdiction in terms of the order of this Court and also the law laid down in the case of M/s. Fabril Gasosa (supra). If the reasons in the Award are

considered with the final order, the conclusion is inescapable that the action by the Bank in not regularising, the workers was held not to be legal. In other words the workmen were entitled to be regularised and be regularised from the date of their first appointment in 3/4 scale. There is no dispute that from the year 1990 and there after the Bank itself has treated them as regular employees and given them all consequential benefits to which they were entitled. For the earlier period therefore their entitlement could be verified by mere arithmetical calculations by fixing the basic in the year of regularisation and thereafter considering annual increment. In so far as the earlier period before the regularisation by the Bank is concerned the workmen were in service, the records if any would be available with the Bank, and in these circumstances the Bank ought to have produced the records to show for which days or period they were not entitiled to the monies after the workmen had filed the calculations. The contentions advanced on behalf of the respondent Management that the workmen are entitled only for the days they worked is meaningless, in the absence of disputing the correctness of the calculations done by the workmen based on the records with the Management had in their possession. The dispute if at all would be from the date of initial appointment

to the date of regularisation by the Bank. The record if at all was with Management. Before the tribunal evidence was recorded and in para 27 of the award, considering the evidence of W.E. Moses the Tribunal observed that they were paid daily and they were not required to sign attendance register or muster roll. If the Management had in their possession any other documents contrary to what was stated by Moses, it should have been the duty of the respondent Management in whose custody such records were, to place them before the Authority. The only consequence of such records would be that these petitioners/workmen if they had claimed wages for a day on which they had not worked, would be deducted from the amount claimed. No such evidence was produced.

. All seven workmen had filed independent applications. The Management was aware of the calculations shown to them. Merely disputing the calculations to my mind is not sufficient to take the matter out of Section 33(C)(1). The entire exercise by the authority was totally without jurisdiction. The petitioner no.1 Union who there after had filed replies on behalf of the workmen had specifically set out in one of their replies that, all that the workmen were claiming was DA, CCA, HRA and conveyance allowances which they were entitled

as regular employees. This could be proved by an arithmetical calculation. The orders of the authority on that count would therefore have to be set aside.

8. The only other contention is whether the application was within limitation and/or the delay ought to have been condoned. In the instant case the Award of the Industrial Tribunal is dated 20th November, 1998 which was published subsequently as can be seen from the averment of the Management. The amounts were forwarded to the workmen by the Management by their letter of 16th September, 1999. The applications were made on 3rd August, 2000. The dispute of nonpayment was raised by the workmen by the letter dated 9th October, 1999. If that be the case the application was clearly within jurisdiction even if 16th September, 1999 is taken as the date of commencement of limitation, considering that the dispute would arise on that day. The finding therefore of the authority below that the application was barred by limitation is clearly without jurisdiction. Even otherwise assuming that there was any delay this would have been a fit case where the Tribunal ought to have exercised its discretion in favour of the workmen. There is an Award in their favour. The amounts were payable by the respondent no.1 which is State or public

authority. Such authorities to raise the plea of limitation in respect of legitimate dues of its employees, more soin class IV is really deplorable, on the facts of the present case. The order of the Authority on that count is liable to be set aside.

9. It was sought to be contended that the petitioner no.1 has no locus standi. That really does not arise as the applications were by the workmen. The workmen are also petitioners nos.2 to 8 and even otherwise Section 33(C)(1) enables not only the workmen but their authorised representatives to maintain the application. To my mind also that objection must be rejected.

10. Having said so, in the absence of production of any material before the authority below as to on what dates the amounts claimed were not due and payable and also by not placing any material before this Court to that effect, to my mind the figures given by the petitioner workmen will have to be accepted. Merely contending that there is Bonus register in which the dates are available is not sufficient. Those dates if at all would be within the knowledge of the respondents themselves. They have not placed that material before the authority or the Court. Even otherwise it seems that the only contention is that workmen would not be entitled to

claim for the off days. Once the workmen were regularised they would be so entitled to payment on all off days. That contention must therefore, be rejected.

11. Considering the above to my mind there is no question of further remand to the authority as no specific dispute as to calculation has been made. In the light of that, petition made absolute in terms of prayer clause (a). Amounts to be paid within three months from today.

12. Considering the amounts involved and various litigations that the petitioners have to face in my opinion to meet ends of justice the respondent no.1 is called upon to pay the costs of this Petition.

. C.C. expedited.

(F.I.REBELLO,J.)